

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

KH-4873

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

**VERIFIED  
COMPLAINT**

Civil Action

No.: CV-\_\_\_\_\_

ESTATE OF JOSEPH VAZZANA, SR.,  
JOSEPH VAZZANA, JR., and  
ONE ACRE OF LAND,  
MORE OR LESS, LOCATED CONTIGUOUSLY  
AT 51 CABOT AND 50 DALE STREETS, WEST  
BABYLON, NEW YORK,

(\_\_\_\_\_, J.)

(\_\_\_\_\_, M.J.)

Defendants.

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The United States of America, by authority of the Attorney General of the United States and through the undersigned counsel, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Verified Complaint and alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675:

a. For recovery in personam against defendants Estate of Joseph Vazzana, Sr. ("the Estate") and Joseph Vazzana, Jr. ("Vazzana, Jr.") of response costs incurred by the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), in connection with the release or threatened release of hazardous substances into the environment at or from a facility

known as the Spectrum Finishing Corporation Superfund Site (“Site”), located in the village of West Babylon, New York;

b. For recovery in rem of all costs constituting the lien of the United States pursuant to Section 107(I) of CERCLA, 42 U.S.C. § 9607(I) (“CERCLA lien”), against defendant One Acre of Land more or less, located contiguously at 51 Cabot and 50 Dale Streets, West Babylon, New York (“One Acre of Land”), which is comprised of two contiguous parcels of real property that constitute the Site, and is further described below in paragraph 11.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action and jurisdiction in personam over defendants Estate and Vazzana, Jr. pursuant to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. This Court has jurisdiction in rem over defendant One Acre of Land pursuant to Section 107(I)(4) of CERCLA, 42 U.S.C. § 9607(I)(4), 28 U.S.C. § 1655, and Federal Rule of Civil Procedure 4(n).

4. Venue is proper in this judicial district for the in personam claims pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose, and the threatened or actual releases of hazardous substances occurred in this district.

5. Venue is proper in this judicial district for the in rem claim pursuant to Section 107(I)(4) of CERCLA, 42 U.S.C. § 9607(I)(4), and 28 U.S.C. §§ 1391(b), because EPA’s removal action at the Site occurred in this district.

## **DEFENDANTS**

### **The Estate**

6. Since 1979, Joseph Vazzana, Sr. ("Vazzana, Sr.") has been a record owner of the property that constitutes the Site, which is described more particularly at paragraph 11 below ("Property").

7. Vazzana, Sr. died intestate on June 27, 2003.

8. Upon information and belief, the estate of Vazzana, Sr. has not yet been distributed.

9. Upon information and belief, the Property is contained within the Estate.

### **Vazzana, Jr.**

10. Vazzana, Jr. is an individual who resides at 91 Moriches Avenue, Mastic, New York.

### **One Acre of Land**

11. One Acre of Land is formally identified on the Suffolk County Tax map as Section 74, Block 2, lots 7 and 11, located contiguously at 51 Cabot and 50 Dale Streets in West Babylon, New York, and is recorded in the Suffolk County Clerk's Office at Liber D00012120, Page 345.

## **STATUTORY BACKGROUND**

12. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances, and other pollutants and contaminants into the environment and for funding the costs of such abatement and related enforcement activities, which are known as "response costs," 42 U.S.C. § 9604(a),

9601(25).

13. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1), as amended:

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, . . . such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment . . . .

14. For the purpose of authorizing CERCLA enforcement activities, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

15. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section –

(1) the owner and operator of a vessel or a facility

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

\* \* \*

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for - -

(A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan.

16. CERCLA defines “owner” or “operator” in Section 101(20)(A), 42 U.S.C. § 9601(20)(A), as any person owning or operating a facility.
17. CERCLA defines “facility” in Section 101(9), 42 U.S.C. § 9601(9), as:
- (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.
18. CERCLA defines “disposal” in Section 101(29), 42 U.S.C. § 9601(29), as having “the meaning provided in Section 1004 of the Solid Waste Disposal Act,” 42 U.S.C. § 6903, which in turn defines “disposal” as:
- the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
19. CERCLA defines “release” in Section 101(22), 42 U.S.C. § 9601(22), as:
- any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant) . . .
20. CERCLA defines “response” action in Section 101(25), 42 U.S.C. § 9601(25), to encompass both “removal” and “remedial” actions, which in turn are defined in detail in Sections 101(23) and 101(24) of CERCLA, 42 U.S.C. §§ 9601(23) and 9601(24).
21. Section 107(l)(1) of CERCLA, 42 U.S.C. § 9607(l)(1), provides in pertinent part

as follows:

All costs and damages for which a person is liable to the United States under [Section 107(a) of CERCLA] . . . shall constitute a lien in favor of the United States upon all real property and rights to such property which –  
(A) belong to such person; and  
(B) are subject to or affected by a removal or remedial action.

22. Section 107(l)(2) of CERCLA, 42 U.S.C. § 9607(l)(2), provides in pertinent part

as follows:

The lien imposed by this subsection shall arise at the later of the following:

(A) The time costs are first incurred by the United States with respect to a response action under this chapter.

(B) The time that the person referred to in paragraph (1) is provided (by certified or registered mail) written notice of potential liability.

23. Section 107(l) (4) of CERCLA, 42 U.S.C. § 9607(l)(4), provides in pertinent part

as follows:

The costs constituting the lien may be recovered in an action in rem in the United States district court for the district in which the removal or remedial action is occurring or has occurred.

### **GENERAL ALLEGATIONS**

24. The Site consists of approximately one acre of land situated in an industrial park at 51 Cabot and 50 Dale Streets, in the Village of West Babylon, Town of Babylon, Suffolk County, New York.

25. From approximately 1968 to 1993, Vazzana, Sr. operated a plant at the Site (“the

Facility”) at which Spectrum Finishing Corporation (“Spectrum”) conducted metal finishing activities, which included electroplating high strength alloys and descaling titanium alloys for the aerospace industry.

26. Vazzana, Sr. was an owner of Spectrum.

27. Vazzana, Sr. was president of Spectrum.

28. Vazzana, Jr. was a nighttime plant manager at Spectrum during its operations.

29. In his capacity as nighttime plant manager, Vazzana Jr.’s duties included the handling of materials containing hazardous substances.

30. In or about 1994, Spectrum commenced closure activities of the Facility.

31. In May 1997, EPA conducted a preliminary evaluation of the Facility, which revealed the presence of hazardous substances in various containers, including drums, open vats, aboveground storage tanks and a sump. The hazardous substances came to be abandoned at the Site as a result of Spectrum’s operations there. Upon information and belief, Vazzana, Sr. was an owner and operator of the Facility at the time of such abandonment.

32. During EPA’s preliminary evaluation, EPA witnessed Vazzana, Jr. wearing improper protective clothing while haphazardly pumping liquid waste from several on-Site vats into 55-gallon drums and spilling the liquid waste in the process.

33. EPA’s sampling of waste containers found at the Facility revealed the presence of volatile organic compounds such as trichloroethane, and other hazardous substances such as cadmium, chromic acid, nickel, nitric acid, sulfuric acid, hydrochloric acid, and sodium cyanide.

34. The substances identified in paragraph 33 are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

35. Vazzana, Jr. operated the Facility during the time that hazardous substances were released or posed a threat of release from the Facility within the meaning of Section 9601(22) of CERCLA, 42 U.S.C. § 9601(22).

36. EPA authorized a removal action at the Site in August 1997, for which field work began in November 1997. The removal action consisted of the securing, identification, removal, and disposal of hazardous substances found in drums, vats, tanks and sumps at the Site and decontamination of the surfaces of an on-Site building.

37. As of January 10, 2004, EPA has incurred response costs in excess of \$993,000 in connection with the Site.

38. By letter dated August 6, 1997, EPA formally notified Vazzana, Sr. of his potential CERCLA liability in connection with the Site.

39. By letter dated March 16, 2001, EPA formally notified Vazzana, Jr. of his potential CERCLA liability in connection with the Site.

40. By letter dated March 16, 2001, EPA notified Vazzana, Sr. of its intent to file a CERCLA lien against the Property pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 107(l).

41. The CERCLA lien was filed and perfected in the office of the Suffolk County Clerk on May 24, 2001.

42. Upon information and belief, defendant Vazzana, Jr. currently operates the Site and collects rental income for portions of the Site.



## **CLAIMS FOR RELIEF**

### **FIRST CLAIM FOR RELIEF**

#### **The Estate's CERCLA Liability**

43. The United States realleges and incorporates paragraphs 1 through 42 as if fully set forth herein.

44. The Site is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a).

45. Vazzana, Sr. is an "owner" of the Facility within the meaning of Sections 101(9) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a)(1).

47. Vazzana, Sr. owned and/or operated the Facility at the time that hazardous substances were disposed of there, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

48. There has been a "release" or "threatened release" of one or more hazardous substances at or from the Site, within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

49. The United States' actions in response to the release or threatened release of hazardous substances at or from the Site constitute a "removal" action as defined by Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), for which the United States has incurred "response costs," as that term is used in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

50. The United States' removal action with respect to the Site is not inconsistent with the National Contingency Plan.

51. The Estate is jointly and severally liable under Section 107(a)(1) and (2) of

CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2), for all response costs incurred by the United States related to the Site.

## **SECOND CLAIM FOR RELIEF**

### Vazzana, Jr.'s CERCLA Liability

52. The United States realleges and incorporates paragraphs 1 through 51 as if fully set forth herein.

53. Vazzana, Jr. is an operator of a facility within the meaning of Sections 101(9) and 107(a)(1) of CERCLA, 42 U.S.C. §§ 9601(9) and 9607(a)(1).

54. Vazzana, Jr. operated the Facility at the time that hazardous substances were disposed of at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S. C. § 9607(a)(2).

55. Vazzana, Jr. is jointly and severally liable under Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2), for all response costs incurred by the United States related to the Site.

## **THIRD CLAIM FOR RELIEF**

### CERCLA Recovery *In Rem* Against Defendant One Acre of Land

56. The United States realleges and incorporates paragraphs 1 through 55 as if fully set forth herein.

57. Pursuant to Section 107(l)(1) of CERCLA, 42 U.S.C. § 9607(l)(1), all costs incurred by the United States in connection with the Site constitute a CERCLA lien upon the real property which is subject to or affected by the response actions taken by EPA at the Site, including defendant One Acre of Land.

58. Pursuant to Section 107(I)(2) of CERCLA, 42 U.S.C. § 9607(I)(2), the CERCLA lien upon the property will continue until the liability for the United States' unreimbursed response costs incurred in connection with the Site is satisfied.

59. Pursuant to Section 107(I)(4) of CERCLA, 42 U.S.C. § 9607(I)(4), the United States is entitled to recover the costs constituting the CERCLA lien through this claim in rem.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

A. Order the Estate and Vazzana, Jr. to reimburse the United States for all response costs incurred by the United States in connection with the Site, plus interest, in an exact amount to be proven at trial;

B. Order that defendant One Acre of Land be sold at such time in a manner consistent with overall site remediation and that the proceeds from such sale be paid to the United States in reimbursement of response costs for which the Estate and Vazzana, Jr. are jointly and severally liable; and

C. grant the United States such other relief as the Court deems just and proper.

Respectfully Submitted,

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### VERIFICATION OF COMPLAINT

I, Jeffrey Bechtel, am employed by the United States Environmental Protection Agency as an On-Scene Coordinator. I have been responsible for EPA's response actions at the Spectrum Finishing Corporation Superfund Site from 1997 to the present. I have reviewed EPA's files at EPA's office located at 290 Broadway, New York, New York pertaining to the response actions taken at the Spectrum Finishing Corporation Superfund Site and I also have personal knowledge pertaining to certain of the facts addressed herein. I swear under penalty of perjury that the allegations set forth above are true and accurate to the best of my knowledge.

Date: \_\_\_\_\_

\_\_\_\_\_  
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